

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte MARCIA GROSSMAN NOZIK
and RANDY GROSSMAN NOZIK

Appeal 2007-1812
Application 10/759,713
Technology Center 3700

Decided July 13, 2007

Before TONI R. SCHEINER, ERIC GRIMES, and LORA M. GREEN,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a sling holder. The Examiner has rejected the claims as anticipated or obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

BACKGROUND

The Specification describes “a sling holder that when assembled can be secured around a body part to hold an object thereto. The sling holder comprises a strap having first and second ends and a fastener for securing

the strap to itself. The strap includes at least one pocket into which the object is placed.” (Specification 2.) The Specification also describes attaching the pocket to the strap with a fastener, as well as using fasteners to interconnect additional straps to the first strap (*id.*)

DISCUSSION

1. CLAIMS

Claims 1-22 are pending and on appeal. With regard to the obviousness rejection of claims 1-10 and 12-22, the claims have been argued in two groups (Br. 4 and 6). The claims within each of these two groups stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). We will focus on claims 1 and 16, which are representative and read as follows:

1. A sling holder for holding an object for an extended period of time against the skin, said sling holder comprising:
a strap having a first end and an opposing end;
a single fastener for coupling and first end to said second end, said fastener being positioned at said first end and said opposing second end of said strap and positioned completely within the perimeter of said strap; and
at least one pocket attachable to said strap.

16. A sling holder for holding an object against the skin, said holder comprising:
a first strap;
a second strap for adjusting a length of said sling holder, said second strap being attachable at a first end thereof to said first strap;
a single fastener for coupling a second end of said second strap to said first strap, said fastener being positioned at said first strap and said second end of said second strap and positioned completely within the perimeter of said first and second straps; and
at least one pocket attachable to at least one of said first strap and said second strap.

Thus, claim 1 is directed to a sling holder comprising a strap having two ends, a fastener for coupling the ends, and a pocket attachable to the strap. Claim 1 also requires that the fastener be “positioned completely within the perimeter of [the] strap.”

Claim 16 is directed to a sling holder comprising two straps and an attachable pocket. One strap (the “second strap”) is attachable at one end to the other strap (the “first strap”). The sling holder of claim 16 also comprises a single fastener for coupling the other end of the second strap to the first strap, the fastener being “positioned completely within the perimeter of” the two straps.

2. REFERENCES

The Examiner relies on the following references:

Noppel	US 5,069,208	Dec. 3, 1991
Allen	US 5,507,794	Apr. 16, 1996
Silverberg	US 5,823,984	Oct. 20, 1998
Edwards	US 6,440,159 B1	Aug. 27, 2002

3. ANTICIPATION

Claims 1-10 stand rejected under 35 U.S.C. § 102(e) as anticipated by Edwards. The Examiner relies on Edwards for disclosing all of the limitations of claim 1 (Answer 4). With regard to the recitation of “a single fastener,” the Examiner argues that “[c]laim 1 uses the transitional phrase ‘comprising’, which is . . . inclusive or open-ended and does not exclude additional, unrecited elements” (*id.* at 11).

We conclude that the Examiner has set forth a *prima facie* case of anticipation. Edwards describes a “wrap for applying thermal therapy to a patient ha[ving] a therapy section with a pocket sized to receive and retain a

thermal unit” (Edwards, col. 1, ll. 54-56). Attached to the therapy section of the wrap are long and short connecting means; each of the connecting means has left and right sections that extend outwardly from the sides of the therapy section, as well as elements for attaching the two sections of each connecting means to each other (*id.* at col. 1, l. 61, to col. 2, l. 30). As depicted in Figure 1, Edwards discloses attaching elements that are positioned completely within the perimeter of the wrap.

Appellants argue that Edwards fails to disclose a strap having a single fastener (Br. 4). Instead, Appellants argue that the “Edwards device has two fasteners, each of which are positioned on the respectively attachable ‘ears’ of an hourglass-shaped wrap” (*id.*). Appellants also argue that, “while ‘comprising’ takes on the appearance of opening the claim to an additional fastener, the explicit recitation of a ‘single’ fastener should limit the claim to *one* fastener for the sole reason that it would be impossible (and nonsensical) to have more than one single fastener” (Reply Br. 2).

We are not persuaded by this argument. “It is axiomatic that, in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification.” *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983) (citation omitted). In this case, we agree with the Examiner that reciting “a *single* fastener” is insufficient to require that no other fastener be present in the device. First, in view of the “comprising” language, we agree that it is reasonable to interpret claim 1 to include another fastener.

Second, even if the term “single” fastener was interpreted to mean “one and only one” fastener, claim 1 would still reasonably appear to read

on Edwards. That is, claim 1 is not limited to a device having a strap with only two ends. Claim 1 merely requires a “single fastener for coupling” the first end of the strap to the second end of the strap. The attaching elements on, for example, the long connecting means of Edwards appear to meet this limitation. That is, Edwards discloses a sling holder having only one fastener for connecting the first section of the long connecting means to the second section of the long connecting means. There is no language in claim 1 that excludes a fastener from being present on other portions of the device, such as the ends of the short connecting means of Edwards’ device.

We conclude that the Examiner has set forth a prima facie case that claim 1 is anticipated by Edwards, which Appellants have not rebutted. We therefore affirm the rejection of claim 1 under 35 U.S.C. § 102(e).

Claims 2-10 fall with claim 1.

4. OBVIOUSNESS

Claims 1-10 and 12-22 stand rejected under 35 U.S.C. § 103 as obvious over Silverberg in view of Allen. With regard to claim 1, the Examiner relies on Silverberg for disclosing a sling holder comprising “a strap (12); having a first end and an opposing second end; a fastener (14) for coupling said first end to said second end; and at least one pocket attachable (20) to said strap” (Answer 6). With regard to claim 16, the Examiner relies on Silverberg for additionally disclosing “a second strap (second of 12) for adjusting a length of said sling holder, said second strap being attachable at a first end thereof to said first strap; [and] a fastener (14) for coupling a second end of said second strap to said first strap” (*id.* at 8-9).

The Examiner relies on Allen for disclosing a thermal strap having “an alternate means of fastening by providing the device with a single hook-type fastener positioned completely within the perimeter of the strap (10) that fastenably couples to the loop-like material on the other end and side of the strap in order to secure the strap/device about the user” (*id.* at 6). The Examiner concludes that it would have been obvious “to modify the invention of Silverberg, as is well known in the art and taught by Allen, to use a single hook-type fastener positioned completely within the perimeter of the strap as an alternate fastening means in order to secure the strap to a user” (*id.* at 6-7).

We conclude that the Examiner has set forth a *prima facie* case of obviousness. Silverberg describes a wrap for snugly fitting around a body area that “includes one or more panels with . . . surfaces of a fabric loop-type material,” “[h]ook-type fasteners which mate with the fabric loop-type material . . . used to secure adjoining panels together to form a wrap of an appropriate size,” and “[o]ne or more pockets . . . removably attached to the interior surface of the panels” (Silverberg, col. 2, ll. 8-20). “Preferably, three hook-type fasteners are coupled to a right edge of each panel to provide securing means for securing the panel to an adjoining panel” (*id.* at col. 2, ll. 13-17). “The fasteners 14 are preferably sewn to the panel 12 and extend over the edge of the panel for securing to an adjoining panel” (*id.* at col. 3, ll. 20-24).

Allen describes a “support member having two ends, a securing member for removably securing the support member ends, a breast pouch disposed on the support member, and a temperature regulator positioned in

the breast pouch” (Allen, col. 2, ll. 5-8). Preferably, “the adjustable securing member **2** includes a layer **13** of hook-like material disposed proximate one end **11** of the support member,” which meshes with a “layer **18** of fibrous material . . . disposed proximate the opposite end **12** of the support member” (*id.* at col. 3, ll. 14-23). As depicted in Figure 1, Allen discloses a securing member positioned completely within the perimeter of the support member. We agree with the Examiner that it would have been obvious to modify the wrap described in Silverberg to replace the three hook-type fasteners with a layer of hook-like material positioned completely within the perimeter of Silverberg’s panels, as described in Allen.

With regard to claim 1, Appellants argue that “Silverberg and Allen, individually or in combination, fail to disclose, teach, or suggest a sling holder having a strap having a single fastener, the fastener being positioned completely within the perimeter of the strap” (Br. 5). In particular, Appellants argue that the “securing member in the Allen device extends from one end of the support member” and is therefore “not within the perimeter of the support member” (*id.*)

We are not persuaded by this argument. As discussed above, Allen’s Figure 1 depicts a securing member having “a layer **13** of hook-like material disposed proximate one end **11** of the support member,” which meshes with a “layer **18** of fibrous material . . . disposed proximate the opposite end **12** of the support member” (Allen, col. 3, ll. 14-23). Both the layer of hook-like material and the layer of fibrous material are completely within the perimeter of the support member. Thus, we do not agree with Appellants

that the combination of Silverberg with Allen “does not result in a fastener positioned within a perimeter of a strap (Br. 5).¹

Appellants also argue that Allen “emphasizes the stretchable, elastic qualities of its device while Silverberg explicitly discloses a wrap that snugly fits around a body area without the need for elastic bands” (Br. 5-6). Appellants conclude that “one of skill in the art would not likely look from multiple panel wraps that explicitly avoid the use of elastic bands (Silverberg) to stretchable elastic devices (Allen) to arrive at the invention as recited in claim 1” (*id.* at 6).

We are not persuaded by this argument. The Examiner is relying on Allen to demonstrate that it would have been obvious to use a single fastener positioned completely within the perimeter of the strap. Although Silverberg describes a wrap that “snugly fit[s] around a body area without the need for . . . elastic bands” (Silverberg, col. 2, ll. 12-13) and Allen describes a support member formed from an “elastic material which is capable of stretching in multiple directions” (Allen, col. 2, ll. 63-67), we do not agree that one of ordinary skill in the art would not look to Allen for ways to fasten a strap around a body area. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (2007).

Appellants raise substantially the same arguments for claim 16 that are raised for claim 1 (Br. 7). We are not persuaded by these arguments for the reasons discussed above.

¹ In fact, Allen appears to anticipate claim 1.

We conclude that the Examiner has set forth a prima facie case that claims 1 and 16 would have been obvious over Silverberg in view of Allen, which Appellants have not rebutted. We therefore affirm the rejection of claims 1 and 16 under 35 U.S.C. § 103. Claims 2-10 and 12-15 fall with claim 1 and claims 17-22 fall with claim 16.

Claim 11 stands rejected under 35 U.S.C. § 103 as obvious over Silverberg in view of Allen and Noppel. Claim 11 depends from claim 1 and requires that the sling holder further comprises a temperature indicator on the strap or pocket.

The Examiner relies on Silverberg and Allen for the features of claim 1 (Answer 10). The Examiner relies on Noppel for disclosing “a film of a sensitive material capable of indicating whether the temperature of transformation has been reached” (*id.*) The Examiner concludes that it would have been obvious to modify the combined teachings of Silverberg and Allen to include, on the strap or pocket thereof, Noppel’s temperature indicating film (*id.*).

Appellants argue that claim 11 is non-obvious based on its dependency from claim 1 (Br. 6). However, as discussed above, we agree with the Examiner that Silverberg and Allen render claim 1 obvious.

We conclude that the Examiner has set forth a prima facie case that claim 11 would have been obvious over Silverberg in view of Allen and Noppel, which Appellants have not rebutted. We therefore affirm the rejection of claim 11 under 35 U.S.C. § 103.

SUMMARY

The Examiner's position is supported by the preponderance of the evidence of record. We therefore affirm the rejection of claims 1-10 under 35 U.S.C. § 102 and the rejection of claims 1-22 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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